

AUG 15 2001

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )

Republican Party of Louisiana )  
and Carey Holliday, as treasurer )

MUR 4872

GENERAL COUNSEL'S REPORT

**I. ACTIONS RECOMMENDED.**

find no probable cause to believe that the RPL violated 2 U.S.C. § 441d(a) regarding the lack of disclaimers in television advertisements and 2 U.S.C. § 434(b) regarding the reporting of a \$2,100 contribution to Thibodaux for Congress '96 and Errol L. Cormier, as treasurer, ("Thibodaux Committee"); and take no further action and close the file as to the Thibodaux Committee.

**II. BACKGROUND**

This matter was generated based on information ascertained by the Federal Election Commission ("The Commission") in the normal course of carrying out its supervisory responsibilities. See 2 U.S.C. § 437g(a)(2). On December 9, 1998, the Federal Election Commission (the "Commission") found reason to believe that the Republican Party of Louisiana ("RPL") and David Dugas,<sup>1</sup> as treasurer, violated 2 U.S.C. §§ 441a(a)(2)(A) and 434(b) by making excessive contributions to Jenkins for Senate 1996 and Michael A. Tham, as treasurer, ("Jenkins Committee") and to Thibodaux for Congress '96 and Errol L. Cormier, as treasurer,

<sup>1</sup> The Republican Party of Louisiana has had several changes of treasurer since the reason to believe findings. The current treasurer is Carey Holliday.

1 ("Thibodaux Committee") and by failing to properly report these contributions. The findings  
2 were based on information from disclosure reports which reflected that the RPL made both  
3 coordinated and independent expenditures in close temporal proximity in support of the 1996  
4 campaigns of Senate candidate Louis "Woody" Jenkins and House candidate David Thibodaux,  
5 used some of the same vendors for both coordinated and independent expenditures, and/or used  
6 the same vendors as the two candidates. The nature and timing of the expenditures and the use of  
7 overlapping consultants/vendors raised questions as to whether the RPL's "independent  
8 expenditures" were in fact coordinated. The Commission conducted an investigation.

9 On July 6, 2001, this Office sent a probable cause brief ("brief") to the RPL. The brief  
10 recommended that the Commission find probable cause to believe the RPL violated 2 U.S.C.  
11 §§ 434(b), 441a(a)(2)(A), and 441d(a). The RPL requested an extension to respond to  
12 the brief and signed a tolling agreement for the period of the extension. Attachment 1.  
13 Subsequently, the RPL requested all the documents produced by the vendors in this matter. This  
14 Office released documents that were directly relevant to the particular issues set out in the brief  
15 but the RPL renewed their request for access to all documents and the Commission denied the  
16 RPL's request. See Memorandum to the Commission dated August 1, 2001. The RPL submitted  
17 a reply brief dated August 8, 2001. Attachment 2.

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19 **III. ANALYSIS**

20 The brief provides a full analysis of the violations in this matter and is incorporated in  
21 this Report in its entirety.  
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9 In their reply brief, the RPL requests that the Commission reject this Office's  
10 recommendation to find probable cause to believe regarding the violations outlined in the  
11 General Counsel's brief. Attachment 2. In support of its position, the RPL makes a number of  
12 arguments. Because the issues raised in the brief were very narrow, this Report will focus on  
13 those arguments that directly pertain to the violations at issue.

14 At the outset, the RPL resurrects previous claims that this Office has hindered its ability  
15 to prepare its own defense by preventing it from getting access to the vendors and obtaining  
16 information submitted by the vendors. Attachment 2, pages 9-16. Both issues have already been  
17 dealt with in previous correspondence between this Office and the RPL, (see correspondence  
18 between OGC and RPL, Attachment 2, pages 53-60) and most recently by Commission action  
19 denying the RPL's request for access to all the documents produced by the vendors. See  
20 Memorandum to the Commission, August 1, 2001. These issues will not be readdressed here.

21 Throughout the reply brief, (Attachment 2, pages 28-29, 38-40), the RPL argues that the  
22 five-year statute of limitations in this matter has run or is about to run on several of the  
violations. Based on case projections and the extended statute of limitations period, this Office

1 anticipates that it will be able to complete the matter before the statute of limitations expires.  
2 Because of the 16-day tolling period agreed to by the RPL, the September 13, 2001 statute of  
3 limitations date in EPS and CMS is being changed to September 29, 2001.<sup>2</sup>  
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7 The RPL broadly claims that it coordinated only one initial mail piece with each of the  
8 two candidates and that because of a "divergence of political strategy with the RPL," subsequent  
9 expenditures by the RPL in support of the two campaigns were all independent. The RPL  
10 disputes the General Counsel's position that the use of coordinated contents in subsequent  
11 material constitutes coordination. Finally, the RPL argues that there is no evidence for the  
12 reporting, disclaimer, and filing violations outlined in the brief and that even if violations did  
13 occur, they were de minimus. Each of the RPL's arguments is separately addressed below.

14 A. Expenditures in Support of Jenkins

15 1. Reporting of Disbursements to Baker Printing/Giles & Associates

16 In the General Counsel's Brief, this Office pointed out that all of the RPL's  
17 disbursements to vendor Baker Printing for the printing of five mail pieces were reported as  
18 coordinated expenditures in support of the Jenkins election, whereas disbursements to vendor  
19 Giles & Associates for the mailing of the same mail pieces were reported as a mixture of  
20 coordinated and independent expenditures. Because the reports characterized expenditures made  
21 to the different vendors for the same mail pieces inconsistently, of necessity some of them were

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<sup>2</sup> The only transaction still at issue where the statute of limitations could be earlier is an unreported contribution discussed at pages 8-9, *infra*.

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1 misreported. In addition, the fact that most of the mail pieces did not include a statement of  
2 nonauthorization suggested that the mail pieces had been coordinated, and that the \$46,900 in  
3 disbursements to Giles had been improperly reported as independent expenditures, resulting in  
4 excessive contributions from the RPL to the Jenkins Committee.

5 In its reply, the RPL claims that the RPL produced only one coordinated piece in support  
6 of Jenkins (a July 1996 mailer identified in the Brief as Mailer #1)<sup>3</sup> and that none of the four mail  
7 pieces at issue was coordinated. Attachment 2, pages 35-36. *Id.* The RPL argues that three of  
8 the mail pieces were independent, and that the fourth mail piece, the Republican Sample Ballot,  
9 was not an expenditure under 11 C.F.R. § 100.8(b)(10). *Id.* The RPL further claims that not all  
10 of the expenditures to Baker for printing these five mail pieces were reported as coordinated  
11 because it reported \$12,300 in disbursements to Baker as independent expenditures on a Twenty-  
12 Four Hour Contribution Notice filed September 20, 1996, that it re-reported that amount in its  
13 1996 Pre-General Election Report filed on October 21, 1996, and that it finally reported the  
14 amount as a debt to Baker on its 1996 Amended Pre-General Election Report.<sup>4</sup> *Id.* at 33. In this  
15 fashion, the RPL attempts to attack the logic of the brief, which takes the position that the RPL

<sup>3</sup> The RPL notes that there was a divergence of campaign strategy with Jenkins early on in the campaign and the parties did not coordinate subsequent ads. Attachment 2, pages 35-36. The RPL is clearly incorrect when it claims that only one mail piece was coordinated. Another mail piece, not discussed in the brief because not at issue, was produced by Strategic Advertising for the RPL in support of Jenkins. See General Counsel's Report, dated June 19, 2001, Attachment 5, page 11. This mail piece contains a statement that it was authorized by Jenkins for Senate 1996.

<sup>4</sup> A review of RPL disclosure reports reflects that on September 19, 1996, the RPL submitted a 24-hour report of last-minute independent expenditures, which included \$12,300 to Baker Printing on behalf of Woody Jenkins and \$3,240 to Baker Printing on behalf of David Thibodaux.

In compliance with 11 C.F.R. 104.4(a), the RPL reported these last minute expenditures a second time on Schedule E of the 1996 12 Day Pre-General report. However, in their Amended 1996 12 Day Pre-General report, the RPL did not include these expenditures on Schedule E, but rather disclosed them as a single debt to Baker Printing in the amount of \$15,540 on behalf of Jenkins.

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1 cannot treat some expenditures for the mail pieces as independent and some expenditures for the  
2 same mail pieces as coordinated.

3 While the RPL is correct regarding that this expenditure to Baker for printing was initially  
4 reported, the reply does not address how the disbursements to Baker were ultimately disclosed  
5 after the RPL had finished the pertinent reports. As discussed above and in the brief, the RPL  
6 ultimately reported all disbursements to Baker Printing as coordinated expenditures. Absent  
7 other information showing the mailings were coordinated, (see General Counsel's Report, dated  
8 June 19, 2001, pages 7-11), and accepting the RPL's position that only one of the five mail  
9 pieces was coordinated, disbursements for three of the mail pieces should have been reported as  
10 independent expenditures, while any disbursements in connection with the Republican Sample  
11 Ballot mail piece should have been reported as an operating expenditure to Baker Printing.<sup>5</sup>

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15 Correspondingly, because the misreported expenditures were not coordinated,  
16 the RPL did not exceed its combined spending and contribution limits in support of Jenkins, and  
17 this Office recommends that the Commission find no probable cause to believe that the RPL  
18 violated 2 U.S.C. § 441a(a)(2)(A) regarding these expenditures.

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<sup>5</sup> The RPL correctly points out that the Republican Sample Ballot piece is not an expenditure under 11 C.F.R. § 100.8(b)(10)

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**4. Failure to Include a Proper Disclaimer in Television Advertisements**

In the brief, it was noted that the RPL's script for television ads in support of Jenkins did not contain any statement indicating who paid for the advertisement and whether or not it was authorized by any candidate, as required under 2 U.S.C. § 441d(a). In a sworn declaration

submitted with the brief, Rhett Davis, the author of the draft television script, avers that the script reflects his "draft notes regarding a possible television advertisement," and that "the actual television advertisement aired by the RPL contained the appropriate disclaimer: Attachment 2, page 48.

Based on the above declaration from Davis relating to the actual television ads, this Office recommends that the Commission find no probable cause to believe that the RPL violated 2 U.S.C. § 441d(a) in connection with the television ads in support of Jenkins.

**C. Expenditures in Support of Thibodaux**

**1. Failure to Report Contributions and/or Expenditures**

The Thibodaux Committee's 1996 July Quarterly Report reported two in-kind contributions from the RPL: a \$3,031 contribution for a handbill (a mailpiece produced by Strategic Advertising/Mele Printing) and a \$2,100 contribution for yard signs. The RPL's disclosure reports, however, do not reflect corresponding entries for these contributions.

In its reply brief, the RPL argues that it did in fact report the contribution for the yard signs as \$1,635 in coordinated expenditures to "Ron the Sign Man" on June 21, 1996, and June 25, 1996, noting that the Thibodaux Committee "apparently misreported the amount of this coordinated expenditure." Because the finding was based only on the Thibodaux Committee's explanation for the contributions, (see General Counsel's Report, dated June 19, 2001, pages 37-38), and in view of the RPL's response, this Office recommends that the Commission find no probable cause to believe the RPL violated 2 U.S.C. § 434(b) regarding this violation.



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**3. Coordination with the Thibodaux Campaign/Excessive Contributions**

In the brief, this Office found that several direct mail pieces, newspaper and radio advertisements produced by the RPL in support of Thibodaux were coordinated because the ads used contents derived from an earlier RPL mail piece that was coordinated with Thibodaux. As a

1 result, the RPL:

2 made excessive contributions to the Thibodaux campaign.

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For reasons expressed in the

investigative General Counsel's Report, dated June 19, 2001, page 35, this Office, does not recommend that the Commission pursue the Thibodaux Committee for the receipt of these excessive contributions. Accordingly, this Office recommends that the Commission take no further action and close the file as to the Thibodaux Committee.

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V. RECOMMENDATIONS

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2. Find no probable cause to believe that the Republican Party of Louisiana and Carey Holliday, as treasurer, violated 2 U.S.C. § 434(b) regarding the reporting of a \$2,100 contribution and 2 U.S.C. § 441d(a) regarding disclaimers in television advertisements.

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4. Take no further action and close the file as to Thibodaux for Congress '96 and Errol L. Cormier, as treasurer.

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Date

8/15/01

Lois G. Lerner by AAS  
Lois G. Lerner  
Acting General Counsel